

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 PAUL EDDIE BLAND, II,)
12 Petitioner,) No. C 07-04023 TEH (PR)
13 vs.) ORDER GRANTING REQUEST
14 ROBERT A. HOREL, Warden) FOR STAY
15 Respondent.)
16 _____) (Docket No. 8)

18 Petitioner, a state prisoner incarcerated at Pelican Bay State Prison in
19 Crescent City, filed a pro se petition for a writ of habeas corpus pursuant to 28
20 U.S.C. § 2254, challenging the constitutionality of his state conviction. After an
21 initial review, the Court found that petitioner had not exhausted four of his claims in
22 the state high court. The Court ordered petitioner to make an election between three
23 options: 1) dismiss the unexhausted claims and proceed with only the exhausted
24 claims; 2) terminate the action to complete exhaustion in state court before filing a
25 new federal petition; or 3) request a stay of the proceedings while he completes
26 exhaustion of his unexhausted claims in the California Supreme Court. Petitioner
27 elected the third option - to stay the proceedings.

28 Good cause appearing, see Rhines v. Webber, 544 U.S. 269, 277 (2005)

United States District Court

For the Northern District of California

1 (finding district courts have authority to stay federal habeas petition, and AEDPA
2 does not deprive them of that authority), the election to stay the proceedings (Docket
3 No. 8) is GRANTED, and the above-titled action is hereby STAYED until petitioner
4 files a motion to reopen as described below.

5 In his notice filed April 16, 2008, petitioner stated that he filed his
6 unexhausted claims with the state high court on March 13, 2008. Petitioner is
7 reminded that within thirty days of the California Supreme Court's decision, he must
8 file a motion to reopen this action. Furthermore, if petitioner wishes to have this
9 Court consider his claims, he must file an AMENDED PETITION at the same time
10 as the above-described motion to reopen this action. The amended petition must
11 include the caption and civil case number used in this order, No. C 07-04023 TEH
12 (PR), and must include the words AMENDED PETITION on the first page.

13 In the amended petition, petitioner must include all the claims he wishes to
14 present, including both the newly exhausted claims and the cognizable claims from
15 the original petition. **If petitioner simply files a motion to reopen this action, but**
does not concurrently file an amended petition in compliance with the
instructions set forth herein, this action will proceed only on the basis of the
exhausted claims in the original petition.

19 The clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of
20 this action.

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DATED: April 22, 2008


THELTON E. HENDERSON
United States District Judge

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